

REMARKS

This amendment is being filed in response to the Office Action dated March 9, 2004. A three month extension of time is also being filed herewith. Sheet 2/4 of the drawings required correction, and a new sheet 2/4 is being submitted herewith.

The Examiner rejected claims 4, 13-15 and 18 under 35 U.S.C. 112, second paragraph. With respect to claim 4, it has been amended to clarify that the proper antecedent basis concerned the top edge and bottom surface of the first chamber. With respect to claims 13-15 and 18, the Examiner asserted the language between the claims was conflicting. Applicant respectfully disagrees.

Although the language may appear to be conflicting, the specific claim language addresses the differences shown in Figs. 3, 4, 6, and 7. As such, Applicant contends that the language of claim 12 can be read on Figs. 3, 4, 6, and 7. However, the language of claim 13 reads on the device shown in Fig. 4, and the language of claim 14-15 and 18 reads on the device shown in Fig. 6. Therefore upon closer reconsideration and examination of the claim language, Applicant submits that the rejection of claims 13-15 and 18 under Section 112 should be withdrawn.

The Examiner rejected claims 1, 9, 12 and 13 under 35 U.S.C. 102(b) based on Suci, U.S. Pat. No 1,891,069. According to the Examiner, Suci discloses a fire starter comprising a first chamber 2, the first chamber having a sidewall 3 with at least one aperture 4, a top edge 15,16, and a bottom surface 6, the first chamber having a planar member 17 disposed horizontally intermediate the top edge and the bottom surface, the planar member having at least one aperture formed therein, a second chamber in

cooperating relationship with the first chamber, the second chamber having a sidewall 18, a tip edge (not referenced) and a bottom surface 19, the bottom surface having at least one aperture, the second chamber having a cone 20, 22 atop the bottom surface 19 and spaced inwardly of the sidewall 18, the second chamber bottom surface 19 located above the first chamber planar member 17, which is removable.

Applicant has amended claims 1 and 12 to recite that the planar member is formed as a plate member which extends completely across the interior of the first chamber as shown in the drawing figures as 82, 182, and 282, instead of just being a peripheral flange as is structure 17 of Suciú as can clearly be seen in its Fig. 2 and as is expressly taught in Suciú at page 2, lines 15-19. Further, since Suciú wants its ashes to fall onto ash receiving tray 11 (erroneously labeled in Figs. 2, 4, and 7 as numeral 8, which is also how the wheel bracket is labeled), there is no motivation to obstruct opening 19. In fact, to do so would be contrary to the teaching of Suciú. Thus, this limitation of Applicant's claims is not anticipated or made obvious by Suciú.

Additionally, Suciú does not disclose Applicant's limitation found in claim 1 that the first chamber sidewall has at least one aperture formed therein intermediate said bottom surface and said planar member. In Suciú, the apertures 4 are all located above the planar member, not between the bottom surface and the planar member. Further, Suciú's apertures are specifically recited as being for ventilating of the heat produced within its wire mesh second chamber, hence the location of them only in the areas adjacent the side walls of the second chamber, namely all above the planar member. Meanwhile, Applicant's aperture(s) are located intermediate the bottom surface and the

planar member to facilitate draft upwardly through the planar member as discussed in the specification. Additionally, putting vents in Suciú below the level of the mesh container could result in the deposition of ash outside the first chamber. Since Suciú teaches that all of its ash is to be collected in tray 11, putting holes in its lower wall between the flanges 17 and the bottom would be contrary to the objectives of Suciú, and as such would not be an obvious modification to make.

With respect to claim 9, the flange 17 of Suciú is not removable, being integral with the vertical side members 15 to which they are attached as can be clearly seen in Fig. 2 of Suciú. Thus, the limitation of claim 9 is neither anticipated nor obvious. Also with respect to claim 12, Suciú does not disclose a place below the bottom surface of the second chamber bottom surface to place a second fuel source. Any fuel in Suciú has to be contained within the wire mesh member, thus this limitation is contrary to the teachings of Suciú. Based on the above comments, Applicant submits that Suciú has been overcome.

The Examiner also rejected claims 1-3, 5, 7, 9, 10-13, and 16 under 35 U.S.C. 103(a) based on Henderson, U.S. Pat. No. 3,765,397, in view of Higman, U.S. Pat. No. 2,488,014. The Examiner states that Henderson discloses a fire starter having a first chamber 14 having a sidewall 36 with at least one aperture 50 located in only one side, a top edge 34, and a bottom surface 54, the first chamber having a planar member 48 disposed horizontally intermediate the top edge and the bottom surface, the planar member having at least one aperture formed therein, a second chamber having a flanged bottom edge 18 in telescopic cooperating relationship with the first chamber, the second

chamber having a sidewall with handles 32 attached thereto, a top edge at 34, and a bottom surface 28 having at least one aperture. The top edge of the second chamber is stated as including a removable grill 22. The second chamber bottom surface 19 is coated above the first chamber planar member 17. Meanwhile, Higman teaches the use of a conical member in a field stove. With respect to Applicant's claims 11, 17, and 18, the shape of Applicant's stove is characterized by the Examiner as merely a design choice. Thus, the Examiner argues that it would be obvious to combine Henderson with Higman to result in Applicant's claimed invention. Applicant respectfully disagrees with the conclusion of the Examiner.

First of all, Henderson teaches the advantages associated with its two tapered walled chambers that have a small open end and a larger open end. This hourglass configuration is a critical aspect of Henderson's invention. It would not be obvious to reject all of the teachings of Henderson in this regard and modify Henderson to result in a stove of a cylindrical configuration as is being claimed by Applicant in claims 11, 17, and 18. Further, none of Henderson's various embodiments disclose a second chamber with a removable grating placed atop the top edge (at 34 according to the Examiner at page 7 of the Office Action) as is recited in Applicant's claim 6. Also, there is nothing in Henderson that would suggest having a first chamber sidewall aperture formed only on one side of the first chamber as recited in Applicant's claims 10 and 16. Fig. 1 and column 2, lines 44-52 of Henderson clearly teach that draft openings 30 (four of which are mentioned) are arranged equidistantly around the tapered wall 16.

Part of the argument of the Examiner is that the “second chamber bottom (19) surface located [is] above the first chamber planar member (17)”. However, the Examiner has already said that the first chamber planar member is 48. Also, Applicant has been unable to locate reference numeral 19 in the drawings of Henderson. Additionally, the Examiner has characterized 17 as being the first chamber planar member, while it is clear that this is the chamber itself, see column 2, lines 19-20 that makes up the second chamber, not the first. Therefore, Applicant does not understand how the Examiner’s suggested structure of Henderson corresponds to the claim language of Applicant with respect to claim 1 and 12. Since some of the claim limitations appear not to be found in Henderson, combining its teachings with Higman would not result in Applicant’s invention as claimed.

It is believed that by clarifying Applicant's invention, by focusing on specific aspects of Applicant's claims which patentably distinguish the invention over the cited art, claims 1-18 are in condition for allowance. If the Examiner has any questions or

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comments which would expedite the issuance of a Notice of Allowance, a telephone call to the undersigned is requested.

Respectfully submitted,

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September 9, 2004

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IN THE DRAWINGS

Please replace the drawing sheet marked 2/4 with the enclosed new formal drawing sheet marked 2/4, wherein the open top defined by the top edge 22 is properly illustrated.